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C A N A D A
DISTRICT OF NOVA SCOTIA
DIVISION No.: 01-Halifax
COURT No.: 45472
ESTATE No.: 51-2943790

SUPREME COURT OF NOVA SCOTIA
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE BANKRUPTCY OF: Sustainable Marine Energy (Canada) Ltd., a
company formed under the laws of Nova Scotia,
having its head office at 95 Simmonds Drive,
Dartmouth, NS, B3B 1N7

Bankrupt

- and -

DELOITTE RESTRUCTURING INC.
(Kurt MacLeod, MBA, CIRP, LIT)
having its place of business at 1741 Lower Water
Street, Suite 800, Halifax NS, B3J 0J2
Licensed Insolvency Trustee

SECTION A – BACKGROUND AND CAUSES OF INSOLVENCY

Sustainable Marine Energy (Canada) Ltd. ("**SMEC**") (previously Black Rock Tidal Power Inc.) was incorporated under the laws of Nova Scotia ("**NS**") on October 10, 2013. The shares of SMEC are wholly owned by Sustainable Marine Energy Limited, an entity domiciled in the United Kingdom. The sole director of SMEC is Jason Hayman.

Prior to its insolvency, SMEC operated as a provider and developer of coastal and nearshore renewable energy solutions. In July 2020, SMEC was engaged by a related entity, Spicer Marine Energy Inc. ("**Spicer**"), to build and develop tidal platforms in relation to the Pempa'q Tidal Energy Project (the "**Project**") which was to be located at the Fundy Ocean Research Centre for Energy ("**FORCE**") near Parrsboro, NS.

Phase one of the Project represented the development of three PLAT-I 6.4 tidal energy platforms, each with a rated power output of 420kW ("**Phase One**"). The end owner of the Project was to be reconcept 13 Meeresenergie Bay of Fundy Limited Partnership ("**RE13**"), who engaged Spicer to design, build and operate the Phase One assets.

Pursuant to the terms of agreements between RE13 and Spicer, Phase One was to achieve its commercial operation date (i.e. the date under a power purchase agreement when the commissioning tests have been passed and the Project starts to generate power to earn revenue) by December 31, 2021.

In late 2021, it became apparent to RE13, Spicer and SMEC that the agreed upon commercial operation date was not going to be achieved. As such, on December 9, 2021, RE13, Spicer, SMEC and other related parties, entered into various agreements (the "**Agreements**") ultimately extending the commercial operation deadline to March 31, 2022. In exchange for extending Project deadlines, SMEC agreed to provide security to RE13 over the majority of its assets.

Due in part to challenges relating to securing necessary Project permits from the Department of Fisheries and Oceans ("**DFO**"), SMEC defaulted on the terms of the Agreements. According to a statement issued by DFO, SMEC failed to deliver an adequate monitoring plan in respect of monitoring impacts to fish and fish habitat and receive permits issued under the Canadian *Fisheries Act* and Canadian *Species at Risk Act*. According to statements made by SMEC, several applications in respect of its proposed monitoring plan had been presented over the past three years. However, the plans submitted by SMEC were not acceptable to DFO.

On December 9, 2023, RE13 issued notices of default and notices of intention to enforce security pursuant to section 244(1) of the *Bankruptcy and Insolvency Act* (the "**BIA**") (the "**Demands**"). Following the Demands, representatives from SMEC, RE13 and other Project stakeholders engaged in negotiations with the goal of continuing the Project. However, these negotiations were ultimately unsuccessful and on May 12, 2023 (the "**Date of Bankruptcy**"), SMEC filed an assignment in bankruptcy pursuant to section 49 of the BIA with Deloitte Restructuring Inc. ("**Deloitte**") being named as the Licensed Insolvency Trustee (the "**Trustee**").

Additional information regarding the administration of the bankruptcy proceedings can be found at the Trustee's website www.insolvencies.deloitte.ca/SMEC.

SECTION B – PRELIMINARY EVALUATION OF ASSETS AND SECURED CREDITORS

As at the Date of Bankruptcy, a preliminary evaluation of the book value of SMEC's assets and liabilities was as follows:

Sustainable Marine Energy (Canada) Ltd.	
Preliminary summary of assets and liabilities	
(\$CAD)	
As at May 12, 2023	
Assets	
Current	7,939,984
Non-current	21,305,698
	<hr/>
	29,245,682
Liabilities	
Current	7,593,452
Non-current	24,331,851
	<hr/>
	31,925,303

Note: The information above has been obtained by the Trustee from the books and records of SMEC and has not been audited, reviewed or otherwise verified. Asset values presented above are presented on a book value basis and, as such, realizations on these assets may vary from the amounts presented if they were to be liquidated.

SMEC's assets primarily consist of the following:

Current:

- Cash and short-term investment certificates of approximately \$64,000 that are held with the Bank of Montreal ("**BMO**");
- Trade accounts receivable from related entities (Spicer, Grand Passage Energy Limited Partnership, Petit Passage Energy Limited Partnership) of approximately \$7,354,000; and
- Refundable deposits and prepaid expenses of approximately \$522,000.

Non-current:

- Vessels (Tidal Pioneer and two workboats) of approximately \$8.561,000;
- PLAT-I 6.4 tidal platform and PLAT-I 4.6 prototype tidal platform of approximately \$11,154,000;
- Miscellaneous office and warehouse equipment of approximately \$147,000;
- capitalized project development costs and deferred financing costs of \$1,442,000; and
- Investments in subsidiaries of \$25.

(collectively, the "**Assets**").

SMEC had previously provided BMO, RE13, Vault Credit Corporation and Neptune Shipyard BV (“**Neptune**”) (collectively, the “**Secured Creditors**”) with security over assets held by SMEC. Based on Deloitte’s understanding of this security as at the date of this Preliminary Report of the Trustee (the “**Report**”), all of SMEC’s assets are encumbered by one or more of the Secured Creditors (the “**Secured Creditor Collateral**”) as follows:

Creditor	Secured Creditor Collateral
BMO	Short term investment certificates
Vault Credit Corporation	Forklift
Neptune Shipyard BV	MV Tidal Pioneer (first position marine mortgage)
RE13	MV Tidal Pioneer (second position marine mortgage) General security agreement granting a charge in all present and after acquired personal property.

The Trustee has, subject to inspector approval, engaged Stewart McKelvey to act as estate legal counsel and will be seeking a motion at the first meeting of the estate inspectors to affirm this appointment.

Stewart McKelvey will then be requested to provide the Trustee with independent legal opinions regarding the validity and enforceability of the Secured Creditor Collateral.

SECTION C – BOOKS AND RECORDS

The Trustee is in possession of SMEC’s physical and electronic books and records and has the necessary passwords to access same where necessary.

As at the date of this Report, the Trustee continues to work with representatives from Sustainable Marine Energy Limited to secure digital records stored on Sustainable Marine Energy Limited systems in the UK.

SECTION D – CONSERVATORY AND PROTECTIVE MEASURES

The Trustee has taken the following conservatory and protective measures over SMEC’s assets:

- Instructed BMO to put SMEC’s bank accounts on “deposit only”;
- Secured physical assets located at SMEC’s leased office at 95 Simmonds Drive, Dartmouth, NS by changing locks;
- Obtained insurance coverage over the Assets with the exception of the MV Tidal Pioneer (discussed further below); and
- Engaged an independent marine contractor in order to perform periodic inspections of the PLAT-I 6.4 tidal platform currently moored in Westport, NS;

In addition to the above measures, the Trustee held numerous discussions with Neptune and provided on May 12, 2023 formal notification that it would not be taking any conservatory of protective measures over the MV Tidal Pioneer due to the lack of estate funding.

SECTION E – RELEVANT INFORMATION RELATING TO PROVABLE CLAIMS AND A DESCRIPTION OF CREDITORS

Based on the books and records of SMEC, there are four Secured Creditors who, in total, are owed \$12.4 million. SMEC further identified 37 unsecured creditors with amounts owing of approximately \$7.5 million.

The Trustee has received six proofs of claim as at the date of this Report.

SECTION F – LEGAL PROCEEDINGS, REVIEWABLE TRANSACTIONS AND PREFERENCE PAYMENTS

Based on a preliminary review of the books and records of SMEC, the Trustee is not aware of any legal proceedings, reviewable transactions, or preference payments at this time.

The Trustee will continue to review the books and records to identify any potential reviewable transactions and/or preference payments.

SECTION G – DETAILS OF THIRD-PARTY DEPOSITS OR GUARANTEES

The fees, disbursements, and costs of the bankrupt proceedings will be covered by an administrative agreement between the Trustee and RE13.

SECTION H – TRUSTEE’S INTENTION TO ACT FOR SECURED CREDITORS

The Trustee is currently in discussions with the RE13 with respect to a potential dual appointment as Receiver. As at the date this Report, these discussions are preliminary in nature.

SECTION I – PROJECTED DISTRIBUTION AND TRUSTEE COMMENTS ON ANTICIPATED ASSET REALIZATIONS

Based on the activities the Trustee to date, the Trustee does not anticipate a distribution to unsecured creditors will be made from the bankrupt estate.

SECTION J – OTHER

On April 3, 2023, Deloitte was retained by RE13 to act as financial consultant with respect to advances provided to SMEC and Spicer. This engagement ended on the Date of Bankruptcy.

Dated at Halifax, Nova Scotia this 1st day of June 2023.

DELOITTE RESTRUCTURING INC.

Acting in its capacity as
Licensed Insolvency Trustee of Sustainable Marine Energy (Canada) Ltd.
and not in its personal capacity

Per:



Kurt Macleod, MBA, CIRP, LIT
Vice President